



General Assembly

January Session, 2011

Amendment

LCO No. 8144

HB0655208144HD0

Offered by:

REP. TERCYAK, 26th Dist.

SEN. MUSTO, 22nd Dist.

REP. GIBBONS, 150th Dist.

To: Subst. House Bill No. 6552

File No. 495

Cal. No. 296

***"AN ACT CONCERNING THE TRANSFER AND DISCHARGE OF
NURSING FACILITY RESIDENTS."***

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- 1 In line 29, after "means" insert "a situation in which"
 - 2 In line 97, strike "ten" and insert "twenty" in lieu thereof
 - 3 In line 100, strike "ten-day" and insert "twenty-day" in lieu thereof
 - 4 Strike line 190 in its entirety and insert the following in lieu thereof:
 - 5 "by requesting a hearing in writing [within ten] not later than twenty
 - 6 days [of]"
 - 7 In line 191, strike "[within] not later than ten" and insert in lieu
 - 8 thereof "[within ten] not later than twenty"
 - 9 In line 194, strike "ten-day" and insert "twenty-day" in lieu thereof
 - 10 In line 243, strike "shall" and insert "may" in lieu thereof

11 In line 405, strike "ten" and insert "twenty" in lieu thereof

12 After the last section, add the following and renumber sections and
13 internal references accordingly:

14 "Sec. 501. Subsection (d) of section 17b-99 of the general statutes is
15 repealed and the following is substituted in lieu thereof (*Effective July*
16 *1, 2011*):

17 (d) The Commissioner of Social Services, or any entity with whom
18 the commissioner contracts, for the purpose of conducting an audit of
19 a service provider that participates as provider of services in a
20 program operated or administered by the department pursuant to this
21 chapter or chapter 319t, 319v, 319y or 319ff, except a service provider
22 for which rates are established pursuant to section 17b-340, shall
23 conduct any such audit in accordance with the provisions of this
24 subsection. For purposes of this subsection "provider" means a person,
25 public agency, private agency or proprietary agency that is licensed,
26 certified or otherwise approved by the commissioner to supply
27 services authorized by the programs set forth in said chapters.

28 (1) Not less than thirty days prior to the commencement of any such
29 audit, the commissioner, or any entity with whom the commissioner
30 contracts to conduct an audit of a participating provider, shall provide
31 written notification of the audit to such provider, unless the
32 commissioner, or any entity with whom the commissioner contracts to
33 conduct an audit of a participating provider makes a good faith
34 determination that (A) the health or safety of a recipient of services is
35 at risk; or (B) the provider is engaging in vendor fraud. A copy of the
36 regulations established pursuant to subdivision (11) of this subsection
37 shall be appended to such notification.

38 (2) Any clerical error, including, but not limited to, recordkeeping,
39 typographical, scrivener's or computer error, discovered in a record or
40 document produced for any such audit, shall not of itself constitute a
41 wilful violation of program rules unless proof of intent to commit
42 fraud or otherwise violate program rules is established.

43 (3) A finding of overpayment or underpayment to a provider in a
44 program operated or administered by the department pursuant to this
45 chapter or chapter 319t, 319v, 319y or 319ff, except a provider for
46 which rates are established pursuant to section 17b-340, shall not be
47 based on extrapolated projections unless (A) there is a sustained or
48 high level of payment error involving the provider, (B) documented
49 educational intervention has failed to correct the level of payment
50 error, or (C) the value of the claims in aggregate exceeds one hundred
51 fifty thousand dollars on an annual basis.

52 (4) A provider, in complying with the requirements of any such
53 audit, shall be allowed not less than thirty days to provide
54 documentation in connection with any discrepancy discovered and
55 brought to the attention of such provider in the course of any such
56 audit.

57 (5) The commissioner, or any entity with whom the commissioner
58 contracts, for the purpose of conducting an audit of a provider of any
59 of the programs operated or administered by the department pursuant
60 to this chapter or chapter 319t, 319v, 319y or 319ff, except a service
61 provider for which rates are established pursuant to section 17b-340,
62 shall produce a preliminary written report concerning any audit
63 conducted pursuant to this subsection, and such preliminary report
64 shall be provided to the provider that was the subject of the audit, not
65 later than sixty days after the conclusion of such audit.

66 (6) The commissioner, or any entity with whom the commissioner
67 contracts, for the purpose of conducting an audit of a provider of any
68 of the programs operated or administered by the department pursuant
69 to this chapter or chapter 319t, 319v, 319y or 319ff, except a service
70 provider for which rates are established pursuant to section 17b-340,
71 shall, following the issuance of the preliminary report pursuant to
72 subdivision (5) of this subsection, hold an exit conference with any
73 provider that was the subject of any audit pursuant to this subsection
74 for the purpose of discussing the preliminary report.

75 (7) The commissioner, or any entity with which the commissioner
76 contracts, for the purpose of conducting an audit of a service provider,
77 shall produce a final written report concerning any audit conducted
78 pursuant to this subsection. Such final written report shall be provided
79 to the provider that was the subject of the audit not later than sixty
80 days after the date of the exit conference conducted pursuant to
81 subdivision (6) of this subsection, unless the commissioner, or any
82 entity with which the commissioner contracts, for the purpose of
83 conducting an audit of a service provider, agrees to a later date or
84 there are other referrals or investigations pending concerning the
85 provider.

86 (8) Any provider aggrieved by a decision contained in a final
87 written report issued pursuant to subdivision (7) of this subsection,
88 may, not later than thirty days after the receipt of the final report,
89 request, in writing, a review on all items of aggrievement. Such request
90 shall contain a detailed written description of each specific item of
91 aggrievement. The designee of the commissioner who presides over
92 the review shall be impartial and shall not be an employee of the
93 Department of Social Services Office of Quality Assurance or an
94 employee of an entity with whom the commissioner contracts for the
95 purpose of conducting an audit of a service provider. Following
96 review on all items of aggrievement, the designee of the commissioner
97 who presides over the review shall issue a final decision.

98 (9) [The] A provider [shall have the right to] may appeal a final
99 decision issued pursuant to subdivision (8) of this subsection to the
100 Superior Court in accordance with the provisions of chapter 54.

101 (10) The provisions of this subsection shall not apply to any audit
102 conducted by the Medicaid Fraud Control Unit established within the
103 Office of the Chief State's Attorney.

104 (11) The commissioner shall adopt regulations, in accordance with
105 the provisions of chapter 54, to carry out the provisions of this
106 subsection and to ensure the fairness of the audit process, including,

107 but not limited to, the sampling methodologies associated with the
108 process.

109 Sec. 502. (NEW) (*Effective from passage*) (a) (1) For purposes of this
110 section "facility" means any facility described in this subsection and for
111 which rates are established pursuant to section 17b-340 of the general
112 statutes.

113 (2) The Commissioner of Social Services shall conduct any audit of a
114 licensed chronic and convalescent nursing home, chronic disease
115 hospital associated with a chronic and convalescent nursing home, a
116 rest home with nursing supervision, a licensed residential care home,
117 as defined by section 19a-490 of the general statutes, and a residential
118 facility for the mentally retarded which is licensed pursuant to section
119 17a-227 of the general statutes and certified to participate in the Title
120 XIX Medicaid program as an intermediate care facility for the mentally
121 retarded in accordance with the provisions of this section.

122 (b) Not less than thirty days prior to the commencement of any such
123 audit, the commissioner shall provide written notification of the audit
124 to such facility, unless the commissioner makes a good-faith
125 determination that (1) the health or safety of a recipient of services is at
126 risk; or (2) the facility is engaging in vendor fraud under sections 53a-
127 290 to 53a-296, inclusive, of the general statutes.

128 (c) Any clerical error, including, but not limited to, recordkeeping,
129 typographical, scrivener's or computer error, discovered in a record or
130 document produced for any such audit, shall not of itself constitute a
131 wilful violation of the rules of a medical assistance program
132 administered by the Department of Social Services unless proof of
133 intent to commit fraud or otherwise violate program rules is
134 established.

135 (d) A finding of overpayment or underpayment to such facility,
136 shall not be based on extrapolated projections unless (1) there is a
137 sustained or high level of payment error involving the facility, (2)
138 documented educational intervention has failed to correct the level of

139 payment error, or (3) the value of the claims in aggregate exceeds one
140 hundred fifty thousand dollars on an annual basis.

141 (e) A facility, in complying with the requirements of any such audit,
142 shall be allowed not less than thirty days to provide documentation in
143 connection with any discrepancy discovered and brought to the
144 attention of such facility in the course of any such audit.

145 (f) The commissioner shall produce a preliminary written report
146 concerning any audit conducted pursuant to this section and such
147 preliminary report shall be provided to the facility that was the subject
148 of the audit not later than sixty days after the conclusion of such audit.

149 (g) The commissioner shall, following the issuance of the
150 preliminary report pursuant to subsection (f) of this section, hold an
151 exit conference with any facility that was the subject of any audit
152 pursuant to this subsection for the purpose of discussing the
153 preliminary report.

154 (h) The commissioner shall produce a final written report
155 concerning any audit conducted pursuant to this subsection. Such final
156 written report shall be provided to the facility that was the subject of
157 the audit not later than sixty days after the date of the exit conference
158 conducted pursuant to subsection (g) of this section, unless the
159 commissioner and the facility agree to a later date or there are other
160 referrals or investigations pending concerning the facility.

161 (i) Any facility aggrieved by a final report issued pursuant to
162 subsection (h) of this section may request a rehearing. A rehearing
163 shall be held by the commissioner or the commissioner's designee,
164 provided a detailed written description of all items of grievance in
165 the final report is filed by the facility not later than ninety days
166 following the date of written notice of the commissioner's decision.
167 The rehearing shall be held not later than thirty days following the
168 date filing of the detailed written description of each specific item of
169 grievance. The commissioner shall issue a final decision not later
170 than sixty days following the close of evidence or the date on which

171 final briefs are filed, whichever occurs later. Any items not resolved at
172 such rehearing to the satisfaction of the facility or the commissioner
173 shall be submitted to binding arbitration by an arbitration board
174 consisting of one member appointed by the facility, one member
175 appointed by the commissioner and one member appointed by the
176 Chief Court Administrator from among the retired judges of the
177 Superior Court, which retired judge shall be compensated for his
178 services on such board in the same manner as a state referee is
179 compensated for his services under section 52-434 of the general
180 statutes. The proceedings of the arbitration board and any decisions
181 rendered by such board shall be conducted in accordance with the
182 provisions of the Social Security Act, 42 USC 1396, as amended from
183 time to time, and chapter 54 of the general statutes.

184 (j) The submission of any false or misleading fiscal information or
185 data to the commissioner shall be grounds for suspension of payments
186 by the state under sections 17b-239 to 17b-246, inclusive, of the general
187 statutes and sections 17b-340 and 17b-343, inclusive, of the general
188 statutes in accordance with regulations adopted by the commissioner.
189 In addition, any person, including any corporation, who knowingly
190 makes or causes to be made any false or misleading statement or who
191 knowingly submits false or misleading fiscal information or data on
192 the forms approved by the commissioner shall be guilty of a class D
193 felony.

194 (k) The commissioner, or any agent authorized by the commissioner
195 to conduct any inquiry, investigation or hearing under the provisions
196 of this section, shall have power to administer oaths and take
197 testimony under oath relative to the matter of inquiry or investigation.
198 At any hearing ordered by the commissioner, the commissioner or
199 such agent having authority by law to issue such process may
200 subpoena witnesses and require the production of records, papers and
201 documents pertinent to such inquiry. If any person disobeys such
202 process or, having appeared in obedience thereto, refuses to answer
203 any pertinent question put to the person by the commissioner or the
204 commissioner's authorized agent or to produce any records and papers

205 pursuant thereto, the commissioner or the commissioner's agent may
206 apply to the superior court for the judicial district of Hartford or for
207 the judicial district wherein the person resides or wherein the business
208 has been conducted, or to any judge of such court if the same is not in
209 session, setting forth such disobedience to process or refusal to answer,
210 and such court or judge shall cite such person to appear before such
211 court or judge to answer such question or to produce such records and
212 papers."